



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**

CASE SUMMARY

KENNETH PHILLIPS v. HON. LOUIS ARANETA, CV-03-0351-PR

Parties and Counsel:

Kenneth Phillips is represented by Maria L. Schaffer, Deputy Legal Advocate. The State is represented by Paul M. McMurdie, Deputy Maricopa County Attorney.

Facts:

Kenneth Phillips is charged with first-degree murder and the State is seeking the death penalty. Pursuant to Rule 15.2(g)(1)(c), Ariz. R. Crim. P., Mr. Phillips notified the State that he intends to call certain mental health experts to testify in the mitigation phase of the sentencing proceeding (if he is convicted). Mr. Phillips refused the State's requests for an examination by its own experts. The State filed a "Motion to Compel Disclosure and to Require the Defendant to Submit to Mental Health Exam." The trial court granted the State's motion, in part, stating:

The Court finds that while other horizontal courts have considered this issue with varying outcomes, this Court relies upon A.R.S. ' 13-703(D). Under that subsection, the State and the defendant shall be permitted to rebut any information received at the aggravation or penalty phase of the proceeding. This Court finds that the State's opportunity to rebut mitigation information already identified to be in the form of reports and testimony from Dr. Mark Walters and Dr. Anthony Decker results in the State being allowed to not only cross-examine those mental health experts, or in Dr. Decker's case an addictionologist, but the State is entitled to seek to rebut such information by calling it[s] own experts. A mental health expert called by the State would be limited in his or her ability to render testimony or opinion without the evaluation and examination of the Defendant. Such State expert should not be limited to reviewing the reports and conclusions of other experts called by the Defendant to testify or to rendering opinions regarding the neuropsychological history or condition of the Defendant or any other addiction history without examination of the Defendant.

IT IS ORDERED, over the Defendant's objection, granting the State's Motion to Compel Disclosure [and] to Require the Defendant to Submit to Mental Health Exam. The Defendant shall submit to a mental health exam with a mental

health expert identified by the State to be Dr. Blackwood on a date and time to be agreed to by the parties. Defense counsel's request to be present for such exam is denied.

Defense counsel advises that Defendant will refuse to cooperate in any examination by the State's expert. The Defendant confirms his refusal. Further discussion is held.

IT IS FURTHER ORDERED taking under advisement the ruling on the proper remedy should the Defendant refuse to voluntarily cooperate with Dr. Blackwood for the exam and evaluation pending review of case law as to such issue.

Later, the trial court issued another Minute Entry setting forth further support for its prior order for examination, and ordering "precluding the Defendant from calling the mental health expert Dr. Marc Walters and addictionologist Dr. Anthony Dekker at the mitigation phase given the Defendant's refusal to cooperate in a mental health examination by the State's expert."

Mr. Phillips filed a special action petition in the Court of Appeals, which declined jurisdiction. Mr. Phillips filed a Petition for Review by the Arizona Supreme Court.

Issues:

1. Whether the respondent judge abused his discretion in holding that the petitioner, a capital defendant in the action before the trial court, must submit to a mental health examination by the real party in interest's (hereinafter referred to as the state) chosen doctor.

2. Whether the respondent judge abused his discretion in holding that preclusion of petitioner's mental-health related mitigation at the penalty phase of a capital case is the appropriate remedy for petitioner's refusal to undergo an evaluation by the state's doctor.

This Summary was prepared by the Arizona Supreme Court Staff Attorney-s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.